

REMARKS

Claims 1-5, 7-21, 23 and 24 are pending in the present application. Claims 6 and 22 have been previously been canceled. Claims 1 and 19 are independent.

Art Rejections

Claims 1, 7, 8, 10, 11, 13, 14, 16, 19 and 23 are rejected under 35 U.S.C. § 103 as being unpatentable over Shima in view of Taylor (U.S. Patent 6,057,959). Claims 2-5, 20, and 21 are rejected under 35 U.S.C. § 103 as being unpatentable over Shima in view of Taylor and further in view of Yang. Claims 9 and 12 are rejected under 35 U.S.C. § 103 as being unpatentable over Shima in view of Taylor and further in view of Alexander. Claims 15, 17, and 24 are rejected under 35 U.S.C. § 103 as being unpatentable over Becker, Shima, and Taylor. Claim 18 is rejected under 35 U.S.C. § 103 as being unpatentable over Taylor in view of Shima.

The rejections, insofar as they pertain to the presently pending claims, are respectfully traversed.

Concurrently filed herewith is a Declaration Under 37 C.F.R. § 1.131 which clearly establishes that the subject matter of the claimed invention was reduced to practice prior to the effective date (May 2, 2000) of the Taylor et al. patent. This Declaration is made by an inventor of the present application and is accompanied

by a clear showing of facts establishing an actual reduction to practice prior to the effective date of the reference.

It is noted that the effective date of the Taylor et al. patent is the 35 U.S.C. § 102(a) date. Furthermore, Applicants have already established that the subject matter of the claimed invention and that of Taylor were owned by the same person or subject of an obligation of assignment to the same person (namely, CIENA Corporation) at the time the invention was made. This was done via the acceptance of a filed Terminal Disclaimer. Thus, Taylor has been effectively removed as a reference against this application. Therefore, Applicants respectively request reconsideration and withdrawal of all the art based rejections since all rely upon Taylor.

#### Conclusion

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Michael R. Cammarata (Reg. No. 39,491) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Appl. No. 09/677,344

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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Attachment(s)